

SENATE BILL NO. 192—SENATOR RAWSON

FEBRUARY 15, 1999

Referred to Committee on Judiciary

SUMMARY—Makes various changes concerning common-interest communities. (BDR 10-70)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to common-interest communities; enacting various provisions governing certain rights of an association with respect to certain property; making various other changes concerning common-interest communities; and providing other matters properly relating thereto.

1 WHEREAS, Planned communities are a dominant method of residential
2 development in the State of Nevada; and

3 WHEREAS, Planned communities are developed for the purposes of
4 preserving neighborhood continuity and creating desirable places to reside;
5 and

6 WHEREAS, Planned communities are governed by specific rules and
7 regulations and by unit-owners' associations; and

8 WHEREAS, A unit-owners' association is the form of self-government
9 closest to the people; and

10 WHEREAS, All forms of government should follow the basic principles
11 of democracy found in the United States Constitution and the Nevada
12 Constitution; and

13 WHEREAS, Some unit-owners' associations in this state have a history of
14 abuse of power; and

15 WHEREAS, Unit-owners' associations have power over one of the most
16 important aspects of a person's life, his residence; and

17 WHEREAS, Homeowners invest financially and emotionally in their
18 homes; and

19 WHEREAS, Homeowners have the right to reside in a community
20 without fear of illegal, unfair, unnecessary, unduly burdensome or costly
21 interference with their property rights; now, therefore,

1 THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
2 SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

3
4 **Section 1.** Chapter 116 of NRS is hereby amended by adding thereto a
5 new section to read as follows:

6 *1. An association of a planned community may not restrict, prohibit*
7 *or otherwise impede the lawful residential use of any property that is*
8 *within or encompassed by the boundaries of the planned community and*
9 *that is not designated as part of the planned community.*

10 *2. Except as otherwise provided in this subsection, an association*
11 *may not restrict the access of a person to any of his property. An*
12 *association may restrict access to and from a unit within a planned*
13 *community if the right to restrict such access was included in the*
14 *declaration or in a separate recorded instrument at the time that the*
15 *owner of the unit acquired title to the unit. The provisions of this*
16 *subsection do not prohibit an association from charging the owner of the*
17 *property a reasonable and nondiscriminatory fee to operate or maintain*
18 *a gate or other similar device designed to control access to the planned*
19 *community that would otherwise impede ingress or egress to the property.*

20 *3. An association may not expand, construct or situate a building or*
21 *structure that is not part of any plat or plan of the planned community if*
22 *the expansion, construction or situation of the building or structure was*
23 *not previously disclosed to the units' owners of the planned community*
24 *unless the association obtains the written consent of a majority of the*
25 *units' owners and residents of the planned community who own property*
26 *or reside within 500 feet of the proposed location of the building or*
27 *structure.*

28 *4. The provisions of this section do not abrogate any easement,*
29 *restrictive covenant, decision of a court, agreement of a party or any*
30 *contract, governing document or declaration of covenants, conditions*
31 *and restrictions, or any other decision, rule or regulation that a local*
32 *governing body or other entity that makes decisions concerning land use*
33 *or planning is authorized to make or enact that exists before October 1,*
34 *1999, including, without limitation, a zoning ordinance, permit or*
35 *approval process or any other requirement of a local government or*
36 *other entity that makes decisions concerning land use or planning.*

37 **Sec. 2.** NRS 116.11038 is hereby amended to read as follows:

38 116.11038 "Residential use" means use as a dwelling or for personal,
39 family or household purposes by ordinary customers, whether rented to
40 particular persons or not. Such uses include marina boat slips, *piers*, stable
41 or agricultural stalls or pens, campground spaces or plots, parking spaces or

1 garage spaces, storage spaces or lockers and garden plots for individual
2 use, but do not include spaces or units primarily used to derive commercial
3 income from, or provide service to, the public.

4 **Sec. 3.** NRS 116.2116 is hereby amended to read as follows:

5 116.2116 1. Subject to the provisions of the declaration, a declarant
6 has an easement through the common elements as may be reasonably
7 necessary to discharge the declarant's obligations or exercise special
8 declarant's rights, whether arising under this chapter or reserved in the
9 declaration.

10 2. In a planned community, subject to the provisions of paragraph (f)
11 of subsection 1 of NRS 116.3102 and NRS 116.3112, the units' owners
12 have an easement:

13 (a) In the common elements for purposes of access to their units; and

14 (b) To use the common elements and all real estate that must become
15 common elements (paragraph (f) of subsection 1 of NRS 116.2105) for all
16 other purposes.

17 ***3. Unless the terms of an easement in favor of an association***
18 ***prohibit a residential use of a servient estate, if the owner of the servient***
19 ***estate has obtained all necessary approvals required by law or any***
20 ***covenant, condition or restriction on the property, the owner may use***
21 ***such property in any manner authorized by law without obtaining any***
22 ***additional approval from the association. Nothing in this subsection***
23 ***authorizes an owner of a servient estate to impede the lawful and***
24 ***contractual use of the easement.***

25 ***4. The provisions of subsection 3 do not abrogate any easement,***
26 ***restrictive covenant, decision of a court, agreement of a party or any***
27 ***contract, governing document or declaration of covenants, conditions***
28 ***and restrictions, or any other decision, rule or regulation that a local***
29 ***governing body or other entity that makes decisions concerning land use***
30 ***or planning is authorized to make or enact that exists before October 1,***
31 ***1999, including, without limitation, a zoning ordinance, permit or***
32 ***approval process or any other requirement of a local government or***
33 ***other entity that makes decisions concerning land use or planning.***